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No. 191

In the Supreme Court of the United States

OCTOBER TERM, 1968

GERALDINE SNELL, ET AL., APPELLANTS

v.

GEORGE K. WYMAN, AS COMMISSIONER, NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; MITCHELL GINSBERG, AS COMMISSIONER OF NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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This brief is submitted in response to the Court's order of October 14, 1968, inviting the Solicitor General to express the views of the United States with respect to this case.

OPINION BELOW

The opinion of the three judge district court is reported at 281 F. Supp. 853.

JURISDICTION

By their complaint, appellants sought injunctive and declaratory relief against the operation of New York State welfare laws and regulations on federal

constitutional grounds. A three-judge district court was convened as required by 28 U.S.C. 2281, and entered its judgment dismissing the complaint on March 15, 1968. The notice of appeal was filed on April 11, 1968. Appellants invoke the jurisdiction of this Court under 28 U.S.C. 1253.

QUESTION PRESENTED

Whether New York State provisions authorizing recovery of benefits paid to welfare recipients in specified circumstances are invalid because of conflict with the relevant portions of the federal Social Security Act or the Due Process or Equal Protection clauses of the Fourteenth Amendment to the Constitution.

STATUTES AND REGULATIONS INVOLVED

The relevant provisions of New York State law are set out in the Appendix to the Jurisdictional Statement (App. D). The relevant provisions of the Social Security Act and regulations thereunder are set out in the Appendix to this brief, *infra*.

STATEMENT

As the district court opinion shows (J.S. App. 14–22, 281 F. Supp. 853–869), appellant Snell applied in February, 1967, for benefits under the New York State program of Aid to Families with Dependent Children (AFDC). In order to qualify, she was required to give New York welfare officials a "Pledge Agreement" and "Assignment of Proceeds of Sale" relating to a $900 share which she held in the cooperative apartment where she and her children lived.

These instruments purport to secure her repayment of the cost of the public assistance she subsequently received; however, the mortgage may not be enforced or assigned except under specified circumstances.

Appellant Ramos has been receiving AFDC benefits since 1963. In 1967, after she and her eldest child were injured in an automobile accident, she was required to assign the proceeds of their personal injury claims to the Department of Social Services as a condition to her continued receipt of public assistance. The assignment entitled the State to recover a sum equal to the benefits paid to her since the date of the accident, but not benefits paid before that date. Appellants Malave and Whaley each sought welfare assistance, under AFDC and the Aid to the Permanently and Totally Disabled (APTD) programs, respectively, after suffering accidents. With respect to each, the State has sought recovery, to the extent of benefits paid, from payments received or claimed in compensation for the injury.

Between 1945 and 1954, appellant Marley received welfare benefits under a State-financed public assistance program. At that time, she assigned the proceeds of an insurance policy on her life to the Department of Social Services. With the help of a cousin, she finished paying premiums on this policy in 1967. Because of the prior assignment, however, the insurance company refuses to pay the cash value of the policy to her.

Appellants filed their complaint in the form of a class action, Fed. R. Civ. P. 23, seeking an adjudication that the New York State statutes and supporting

regulations which authorized these assignments and liens were invalid under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution, and as inconsistent with the purposes and provisions of the federal Social Security Act, 42 U.S.C. 301, *et seq.* This latter claim is grounded in the federal financing and coordination of the AFDC and APTD programs under that Act, and thus is not available to appellant Marley, who received benefits under a State program (J.S. 5).

Because of the "small record" and apparent doubts as to whether appellants adequately represented the class, the majority of the district court refused to treat the action as a class suit (J.S. App. 44, n. 27; 281 F. Supp. at 869). The court ruled that, since the State did not seek recovery from wages or salaries earned after a welfare recipient had gone off relief, or from assets acquired with such earnings, "none of the provisions plaintiffs attack have any deterrent or discouraging effect upon the incentives of welfare recipients to improve their lot by seeking and engaging in productive employment" (J.S. App. 25–26; 281 F. Supp. at 860). The majority concluded that appellants' contentions were lacking in merit, and dismissed the complaint.

Judge Kaufman, dissenting, found a lack of "adequate precision" in the recovery provisions, which, in his view, gave offense to the Fourteenth Amendment (J.S. App. 45; 281 F. Supp. at 870). He asserted that the Constitution requires "the Department of Social Services [to] tailor its regulations so that the guide is not the *mere availability of some property* but a

genuine *ability to repay* without sacrificing the basic incidents of self-support." (J.S. App. 53; 281 F. Supp. at 873.) In requiring the citizen to sacrifice those "basic incidents," he urged, the State unlawfully deprives him of his liberty and his equality.

DISCUSSION

1. The federal interest in this litigation is essentially limited to the Supremacy Clause aspect of appellants' claims, that is, whether the provisions or policies of federal legislation foreclose the recovery of welfare benefits from recipients in circumstances such as are presented here. Appellants concede that both of the relevant titles recognize at least some forms of recovery in providing that each State's periodic grant is to be "reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled * * * of the net amount recovered during any prior quarter by the State * * *." 42 U.S.C. 603(b)(2) (AFDC), 1353(b)(2) (APTD). They argue, however, that (1) the legislative history of the provision and (2) overall statutory policy demonstrate that recovery must be limited to such situations as fraud and overpayment, and that Congress never intended that a State might treat its welfare system as giving loans rather than charity.

A. Contrary to appellants' claims, the relevant legislative history does not support their Supremacy Clause argument. Although "recovery" is not defined by statute, and none of the few explanatory examples of "recovery" mentioned in the legislative history resemble the recoveries at issue in this case, established State practices and provisions of recent

federal medical assistance programs suggest congressional acceptance of recoveries such as appellants complain of here.

The Social Security Act as first enacted required State plans for old-age assistance to provide for federal sharing of any recoveries made from the estates of recipients; the legislative history of this provision mentioned as an "example" of a situation in which recoveries might be made, cases where "persons had been defrauding the State." H. Rep. No. 615, 74th Cong., 1st Sess. 17 (1935); S. Rep. No. 628, 74th Cong., 1st Sess. 29 (1935). Like its successors, the statute itself neither required recoveries nor specified what sort of recoveries might be made; it simply required State governments to share with the federal government any recovery made.

The present language, embodied in provisions enacted as part of the omnibus Social Security Act Amendments of 1939, was intended to simplify the recovery procedure and to broaden the federal recovery provision to apply to all three then-existing assistance programs—Old Age Assistance, Aid for Dependent Children, and Aid to the Blind. In the detailed discussion of these amendments, new examples of possible recovery situations were given—"recoveries from the estates of recipients, payments under mistake, etc." H. Rep. No. 728, 76th Cong., 1st Sess. 33 (1939); S. Rep. No. 734, 76th Cong., 1st Sess. 40, 41 (1936)—thus indicating that the reference to "fraud" in the 1935 history was not exhaustive. Perhaps as significant is that the general discussion of the amendments in the House and Senate reports

is presented together with the discussion of two other amendments, which were described as being intended to further clarify the "purpose of all three assistance programs": one inserted the word "needy" into the definition of those eligible for assistance; and the other imposed on the States a duty to consider an applicant's "other income and resources" in determining assistance. H. Rep. No. 728, 29; S. Rep. No. 734, 30–31. All three amendments were minor in relation to the whole of the act, so that the drawing of inferences is perhaps risky; but the soundest inference from this history is that Congress acquiesced in a view of benefits more consistent with broad-scale recovery than contrary to it. . . . .

Subsequent events support this inference. As pointed out in the district court opinion, there is and for a long time has been a "wide prevalence among the States of statutes like those in question" (J.S. App. 42; 281 F. Supp. at 868), which has occasioned neither congressional nor administrative disapproval. We are informed by the Chief of the State Grants Branch in the Social and Rehabilitation Service of the Department of Health, Education, and Welfare that the Federal share of repayments of assistance in fiscal year 1968 was $14,574,497.[1] Indeed, in the recently enacted programs providing medical assistance for the aged (1960) and Medicaid (1965), Congress inserted specific provisions, limited to medical assistance, requiring a qualifying State plan to provide that "no

[1] Excluding refunds of assistance erroneously paid, uncashed checks, etc.

lien may be imposed against the property of any individual prior to his death on account of medical assistance * * * and that there shall be no adjustment or recovery (except [in specified circumstances]) of any medical assistance * * * correctly paid on behalf of such individual under the plan * * *." 42 U.S.C. 302(a)(11)(E), 1382(a)(15)(D); 42 U.S.C. 1396a(a)(18) (Supp. III).[2] These provisions, apparently recognizing that such liens are regularly imposed under other assistance programs, prohibit them for medical assistance programs only. See also S. Rep. No. 1856, 86th Cong., 2d Sess., 108–109 (1960); H. Rep. No. 213, 89th Cong., 1st Sess., 69–70 (1965); S. Rep. No. 404, 89th Cong., 1st Sess., 80 (1965).

B. The basis for appellants' argument that the New York provisions are invalid because they are contrary to the "purpose" of the federal programs is, we submit, inadequately developed on this record. The challenge is necessarily limited by the finding of the court below that, in view of the authoritative limitation of the State recovery provisions by State regulation and the limited facts alleged in the complaint, this case does not present the issue whether recovery may be had from wages or assets earned subsequent to the period during which welfare assistance was provided.[3] Whether or not recovery from wages or

[2] 42 U.S.C. 1396a(a)(25) (Supp. III) not only recognizes but specifically requires recovery of the cost of medical assistance from third parties legally liable to bear it—for example, tortfeasors.

[3] On the facts here, the question presented is even more limited. Only appellant Ramos was receiving welfare benefits prior to the time she acquired the "asset" from which New York

earned assets might be found to frustrate the stated congressional purpose of assisting efforts toward self-support and independence, the question here is quite different. Here, each lien or assignment relates to an asset or claim possessed by the individual concerned at a time when he wished to commence or continue to receive welfare benefits; each was effective only to the extent of benefits subsequently received. Thus, the only disincentive which can fairly be claimed is one relating to *application* for welfare benefits—that people may be reluctant to seek or continue on welfare if it means giving up assets or claims which they possess.

Whether such a disincentive is contrary or unrelated to the federal scheme is in our view quite doubtful. A limitation of welfare to those truly without assets would not appear either irrational or inconsistent with what Congress has done.[4] Cf. *King* v. *Smith*, 392 U.S. 309, 318. Equally important to the disposition of this case, in our view is the fact that this issue was not fully developed below. The district court's refusal to consider this suit a class action appears to reflect the same view.

An example of the inadequacies of this record is found in the question whether the statutory scheme or

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seeks to recover. New York is asserting no right to recover the cost of those prior benefit payments from her claim. Thus, the case of a recovery from an after-acquired asset, even one of windfall nature, is not presented here.

[4] In connection with the AFDC program, Congress has very recently required that certain *income* of dependent children be disregarded in the calculation of benefits, 42 U.S.C. 602(a)(8), as amended (Supp. III).

the Constitution requires the States to leave the citizen a reserve of "basic incidents of self-support" (J.S. App. 53, 281 F. Supp. at 873), an issue stressed in Judge Kaufman's dissent. Judge Kaufman's argument was that such a requirement does exist, and that the New York provisions are invalid under the Due Process clause for failure to accommodate it. In fact, there exist federal regulations governing this question of allowable reserve. They relate, not to "recoveries," but to determining the eligibility of welfare applicants for benefits. As already mentioned, the statute requires that in making this determination the States must consider applicants' "other income and resources." 42 U.S.C. 602(a)(7), 1352(a)(8). The regulations govern what must, what may, and what must not be so considered. In effect, they permit a State to create a reserve as part of its plan, but do not require it to do so. Applicants' homes, for example, could not be considered a "resource" if designated as part of such a reserve; if not so designated, the regulations require the State to consider an applicant's home as a resource, which he might therefore have to sell before qualifying for benefits. Need-Requirements for State Assistance Plans, 33 Fed. Reg. 10230 ff., Paras. 3 (A), (B)(1), (C)(1). The regulations also specify that assets not currently available—for example, a personal injury claim—may *not* be considered current resources, and thus may not be

used to determine benefit eligibility or level.[5] (Para. 3(C)(2)(iii).)

While these regulations exist in the context of broad State discretion "to set [their] own standard of need and to determine the level of benefits * * *," *King* v. *Smith*, 392 U.S. 309, 318, it could be argued that it is inconsistent to treat a home as part of a "reserve" for the purpose of determining current benefit levels and yet require that home to be mortgaged to the State on a promise to repay the benefits thus calculated; or to say that a claim which may not currently be considered a resource may nonetheless be attached by the State to compensate it for the benefits it therefore pays. But these questions were never developed below. It does not appear, for example, whether or not homes are designated as part of an allowable reserve under the New York plan. The question of consistency between the federal requirement that claims as uncertain as injury claims not be considered "resources" and the State's claim of right to premise present payment of benefits upon an assignment of such a claim was never explored. This Court recognized in *King, supra,* 392 U.S. at 317, 322, that the Supremacy Clause argument must be based on a State rule's contravention of one of the requirements which the federal statute imposes on State plans and makes enforceable by the Secretary of the Department of Health, Education, and Welfare, who is required to

[5] Once actual payments on such a claim were received, they would be considered cash in hand, which *must* be taken into account in determining present eligibility and benefit level. Para. 3(C)(2)(i).

approve any State plan which he finds meets the federal requirements. 42 U.S.C. 602(b), 1352(b). Appellants do not suggest that any of these specific federal standards are contravened by the New York provisions.[6]

2. The government has no immediate interest in the Due Process and Equal Protection claims here raised. We point out, however, that the deficiencies in the record respecting the factual background against which these claims must be considered are no less than with respect to the Supremacy Clause claim discussed here. Particularly in view of the existence and general enforcement of an implicit federal standard which requires consideration of the same matters as would bear on the constitutional claims, n. 6, the failure to develop the statutory Supremacy Clause aspect of the case could itself justify a refusal to give the constitutional issues plenary consideration.

It is also our belief that rejection of the constitutional claims in the particular context of this case would not affect the questions raised in *Shapiro* v. *Thompson*, *Washington* v. *Legrant*, and *Reynolds* v. *Smith*, Nos. 9, 33, and 34, this Term. For the reasons already stated, we believe the particular State actions

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[6] The federal agencies charged with enforcement of the federal standards have consistently inferred an unexpressed standard into each assistance program under the Act—that a State plan may not embody unreasonable classifications unrelated to the purposes of the Act. We are informed by the Department of Health, Education, and Welfare that in view of the legislative provision for recoveries and the background of that provision, no State plan recovery provision has ever been found to violate this implicit standard.

at issue here can be more-or-less directly related to the central question of "need," a common issue in all welfare legislation; a prima facie case of rationality can be made out on that basis. In the above three cases, no such relationship was found to exist by the lower courts.

3. In sum, we believe this case is unsuitable for plenary consideration of the statutory and constitutional issues sought to be presented. The narrow factual context in which the issues were presented and the meagerness of the record appear to have played a substantial part in the decision below, and led the court to refuse to accept the complaint as a class action. (J.S. App. 27 and n. 14, 44 n. 27; 281 F. Supp. at 861 and n. 14, 869 n. 27.) Appellants do not appear to challenge this last aspect of the court's decision. Particularly in this circumstance, a summary affirmance would not foreclose consideration of the broader issues lurking in this case in a fuller factual context.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the district court dismissing appellants' complaint should be affirmed.

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